

Section #. 51.01 (3g) of the statutes is renumbered 54.01 (20) and amended to read:

19

Serious and persistent

~~54.01 (20)~~ "Chronic mental illness" means a mental illness which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, which may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support and which may be of lifelong duration. "Chronic mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include infirmities of aging or a primary diagnosis of mental retardation or of alcohol or drug dependence.

degenerative brain disorder

History: 1975 c. 430 ss. 11, 81; 1977 c. 26; 1977 c. 203 s. 106; 1977 c. 428; 1981 c. 79 s. 17; 1983 a. 189 s. 329 (19); 1983 a. 441; 1985 a. 29 s. 3202 (23); 1985 a. 265, 307; 1993 a. 445; 1995 a. 27; 1997 a. 47; 1999 a. 9.

as s. 51.01
(3g) statg.

**** NOTE: I included this definition (the same because the term "serious and persistent mental illness" is now used in s. 54.15(6) and is not, at present, elsewhere defined. It contains the term "infirmities of aging," which I have changed to "degenerative brain disorder." Please review.

End of NOTE

INSERT 7-10

***** NOTE: I created this definition in
instead of renumbering it from ch. 880, stats.,
ch. 54 because it is used in subchapter IV of
ch. 880, stats. Do you want to move
subch. IV to ch. 54? ^{where?} Is my changed language
for the definition what you want?

End of NOTE

Appendix: Alternative Language

Subchapter 1: Definitions

- ✓ "Evaluative capacity" means the ability of an individual to effectively receive and evaluate information or make or communicate decisions with respect to exercise of a right or decision-making power.
- ✓ "Guardian of the person" means a guardian appointed to exercise one or more of the powers listed in sec. ____.
- ✓ "Guardian of the estate" means a guardian appointed to exercise one or more of the powers listed in sec. ____.
- ✗ "Individual found incompetent" means an individual for whom a guardian has been appointed by a court based on a finding that the individual is incompetent under sec. ____.
- "Least restrictive" means placing the least possible restriction on personal liberty and exercise of constitutional rights and promoting the greatest possible integration of the individual into his or her community consistent with meeting the person's essential requirements for health, safety, habilitation, treatment and recovery and protecting the person from abuse, exploitation and neglect.

Subchapter 2: Appointment of Guardian

Note: This will replace the LRB draft sec.54.10 – Appointment of guardian; determination of incompetence – which was our draft proposal's Section 1.

B (1) The court may appoint a guardian of the person or a guardian of the estate for a proposed ward if the court determines the person is a minor as defined in ____.

A (2) (a) The court may appoint a guardian of the person or a guardian of the estate, or both, for an individual based on a finding that the individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:

1. The individual is at least 17 and three-quarters years of age **AND** **aged to and 9 months**

2a. For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable to effectively receive and evaluate information or make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety **AND/OR to to**

3. 2b. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable to effectively receive and evaluate information or make or communicate decisions related to management of his or her property or financial affairs, to the extent that the individual **any of the following applies:**

a. (a) has property that will be dissipated in whole or in part **and/or**

b. (b) is unable to provide for his or her support **and/or**

c. (c) is unable to prevent financial exploitation.

The individual

4. 3. The individual's need for assistance in decision-making or communication **cannot** be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices or other means that the individual will accept. **is unable to**

under par. (a)

statement

(b) Unless the proposed ward is unable to communicate decisions effectively in any way, the determination may not be based on mere old age, eccentricity, poor judgment, or physical disability.

s. 54.25(2)(c)

s. 54.18, 54.20, or 54.25(2)

(c) In appointing a guardian under this subsection, declaring incompetence to exercise a right under sub. ~~sec.~~, or determining what powers it is appropriate for the guardian to exercise under sec. ~~sec.~~, the court shall consider:

all of the following:

1. The report of the guardian ad litem, as required in sec. ~~sec.~~
2. The medical or psychological assessment provided under sec. ~~sec.~~ any independent evaluation under sec. ~~sec.~~ and any additional medical or psychological evaluation ordered by the court under sub. (c) or offered by a party and received by the court.
3. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision-maker.
4. The preferences, wishes and values of the individual with regard to personal needs or property management.
5. The nature and extent of the person's care and treatment needs and property and financial affairs.
6. Whether the person's situation places him or her at risk of abuse, exploitation, neglect, or violation of rights.
7. Whether the individual can adequately understand and appreciate the nature and consequences of his or her impairment.
8. The individual's management of the activities of daily living.
9. The individual's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management (OK 4 OR SAME AS #4 above?)
10. The extent of the demands placed on the individual by his or her personal needs and by the nature and extent of his or her property and financial affairs.
11. Any physical illness of the individual and the prognosis of the individual.
12. Any mental disability, alcoholism, or substance dependence of the individual and the prognosis of the mental disability, alcoholism, or substance dependence.
13. Any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition and judgment.
14. Whether the effect on the person's evaluative capacity is likely to be temporary or long-term, and whether the effect may be ameliorated by appropriate treatment, and
15. Other relevant evidence.

, or other

s. 54.40(4)

(c)

s. 54.40(4)(c)

s. 54.36

desires,

individual's

other drug

individual's

s. 54.25(2)(c)

s. 54.18, 54.20, or 54.25(2)

(d) Before appointing a guardian under this subsection, declaring incompetence to exercise a right under sub. ~~sec.~~, or determining what powers it is appropriate for the guardian to exercise under sec. ~~sec.~~, the court shall determine if additional medical, psychological, social, vocational or educational evaluation is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain

**** NOTE:

Are the cross-references in par. (c) (intro.), 1., and 2. what you intend?

the individual's

assistance in the manner provided in s. 55.06(8) whether or not protective placement is made.

under ss. 54.18, 54.20, and 54.25(2)

(e) In appointing a guardian under this subsection, the court shall authorize the guardian to exercise only those powers, enumerated in sec. 54.25(2), that are necessary to provide for the individual's personal needs and property management in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

the court appoints

and to exercise the powers

(3) If both a guardian of the person and a guardian of the estate are appointed for an individual, the court may appoint separate persons to be guardian of the person and of the estate, or may appoint one person or persons to act as both.

End of INSERT 10-9

Subchapter 3, Section 4—Powers of the Guardian of the Person –

NOTE: Most of this would replace the LRB draft at sec. 54.25(2).

- (1) **Presumption in favor of limited guardianship.** A guardian of the person may exercise only those rights and powers that the guardian is specifically authorized to exercise by the court order. Any right or power that the guardian is not authorized to exercise by the court order is retained by the individual, unless the individual has been declared incompetent to exercise the right under sub. (3) or the power has been transferred to the guardian under (4).
- (2) **Rights retained by all persons found incompetent.** An individual found incompetent retains the power to exercise all of the following rights, without consent of the guardian:
 - (a) To have access to and communicate privately with the courts and government representatives, including but not limited to the right to have input into plans for support services, the right to initiate grievances, including but not limited to state and federal law regarding resident or patient rights, administrative hearings, and court proceedings.
 - (b) Other Rights – To have access to, communicate privately with and retain legal counsel, with fees paid by the ward's estate, subject to court approval.
 - (c) Private Communications – To have access to and communicate privately with representatives of the protection and advocacy agency under sec. 51.62 and the board on aging and long term care.
 - (d) Other Rights - Any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including but not limited to the rights:
 1. To protest a residential placement made under s. 55.05(5), and to be discharged from a residential placement unless the individual is protectively placed under s. 55.06, or the elements of s. 55.06(11) are present.
 2. To petition for court review of guardianship, protective service, protective placement and commitment orders.
 3. To give or withhold a consent reserved to the individual under ch. 51.
 4. To free speech, freedom of association and free exercise of religious expression.
 - (e) Right to testify

INSERT 13-8

(3) ^B

AGENT UNDER A POWER OF ATTORNEY FOR

HEALTH CARE. The court shall appoint as

guardian of the person the agent under

a proposed ward's power of attorney for health

care, unless the court finds that the

appointment of the agent is not in the

best interests of the proposed ward.

Section #. 880.09 (1) of the statutes is renumbered 54.15 (2) (b) and amended to read:

~~54.15 (2) (b) NOMINATION BY MINOR:~~ A minor over 14 years may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is without the state, or if other good reason exists, the court may dispense with the right of nomination.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.09; 1973 c. 284; 1975 c. 393; 1977 c. 449; 1993 a. 486.

minor's

outside of



Section #. 880.09 (3) of the statutes is renumbered 54.15 (2) (c) and amended to read:

of a minor who has not
attained the age of 15

~~54.15 (2)~~ (c) ~~EFFECT OF NOMINATION BY MINOR~~. If neither parent is suitable and willing, the court may appoint the nominee of a minor.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.09; 1973 c. 284; 1975 c. 393; 1977 c. 449; 1993 a. 486.

to be
appointed
guardian

Have I amended
* * * * paragraphs (b) and (c) (renumbered
from s. 880.09 (1) and (3), stats.) as you wish?

End of NOTE

End of INSERT
13-18

INSERT 14-4

*** NOTE: Your instructions on this subsection are as follows:

"... please delete " or other person with other like incapacity" and change. Perhaps we should check with WCA as to whether there are any other situations where parents should be preferred ?" How do you want me to change the phrase? Have you been able to check with WCA ?

Should the parent of a spendthrift receive preference under this subsection? (Current law does not mention parents of spendthrifts.)

✓

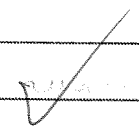
INSERT 15-1

**** NOTE: In LRB-0039/PI, I asked for an example of a nonprofit entity that is not organized under ch. 181, 187, or 188, stats. Your answer was a partnership, LLC, trust, unincorporated association. Rob Marchant, our Business Associations drafter, has not heard of a non-profit LLC or partnership. Do you perhaps, instead, mean tax-exempt under 501c? Would you ever want a trust to be guardian of the ⁽¹⁾person? If you are contemplating the possible appointment of all these, plus an unincorporated association as guardian, wouldn't it be simpler to refer to "person," (under the very broad meaning in s. 990.01(26), stats., instead?

End of NOTE

INSERT 15-1

*** NOTE: Why does DHS promulgate
these rules under ch. 55, stats? why not
under this chapter (formerly, ch. 880, stats.)?



END OF INSERT

Section #. 880.33 (5m) of the statutes is amended to read:

(9) LIMITATION ON NUMBER OF WARDS OF GUARDIAN.

880.33 (5m) No person, except a nonprofit corporation approved by the department of health and family services under s. 880.35, who has guardianship of the person of 5 or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of more than 10 such wards unrelated to the person.

History: 1973 c. 284; 1975 c. 393, 421; 1977 c. 29, 187; 1977 c. 203 s. 106; 1977 c. 299, 318, 394, 418, 447; 1979 c. 110, 356; 1981 c. 379; 1987 a. 366; Sup. Ct. Order, 151 Wis. 2d xxii, xxxiv; 1989 a. 200; Sup. Ct. Order, 153 Wis. 2d xxim xxv (1989); 1991 a. 32, 39; 1993 a. 16, 316; 1995 a. 27 s. 9126 (19); Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 237.

individual, except that a court may, under circumstances that the court determines are appropriate, waive this limitation to authorize appointment of the individual

individual. A corporation or entity that is approved by the department under sub. (7) is not limited in the number of adult wards for which the corporation or entity may accept appointment by a court as guardian

INSERT 18-7A

or, unless the court first approves the terms,
rate of interest, and any requirement for
security, lend funds of the ward to another

INSERT 18-7 B

**** NOTE: I corrected the numbering
of the paragraphs under this subsection (I had
mistakenly renumbered par. (a) from s.
880.19 (4)(c) as s. 54.18 (3)(h), rather than
s. 54.18 (3)(a)).

✓

us4#

In addition, in exercising powers and duties under this section, the guardian of the estate shall consider, consistent with the functional limitations of the ward, all of the following: ✓

(a) The ward's understanding of the harm that he or she is likely to suffer as the result of his or her inability to manage property and financial affairs.

(b) The ward's personal preferences and desires with regard to managing his or her activities of daily living.

(c) The least restrictive form of intervention for the ward.

*** NOTE: Does this subsection now conform to your intent? ✓

INSERT 23-12

(e) Ascertain and exercise any rights available to the ward under a retirement plan or account.

**** NOTE: I did not draft "Establish," as proposed, because a guardian would not, for instance, have the right to establish a right in a retirement plan; did you mean "Ascertain," as I have drafted?
"Make application for?"

INSERT 23-16

**** Note: By "lifetime transfer," do
you mean during the life of the ward? If
so, "lifetime" seems unnecessary; is "other"
transfer, instead, okay?

INSERT 24-6

, because of the creation
of s. 54.21,

*** NOTE: I understand that s. 54.20 (2)

(h) is not intended to overrule any of the Guardianship
of F.E.H., 154 Wis.2d 576 (1990).

the court's interpretation

of s. 880.173 in

End of
NOTE



NOTE

INSERT 26-11

9 (a) "Other individual" means any of the following:

9 1. The ward's spouse, if any.

9 2. The guardian ad litem of the ward's minor child, if any.

9 3. The ward's disabled child, if any.

9 **** NOTE: What does "disabled" mean in this context? Developmental disability? Physical disability?

End of NOTE

9 4. Any of the ward's siblings who has an ownership interest in property that is co-owned with the ward.

9 5. Any of the ward's children who is a caregiver, as defined in s. 46.986(1)(b), for the ward.

9 **** NOTE: Is the definition of "caregiver" suitable for your purposes?

9 (b)

INSERT 26-15

*** NOTE: Wouldn't "guardian" in sub (2)

(intro.) actually be "guardian of the person," since

a guardian includes a guardian of the estate?

End of NOTE

INSERT 28-15

(d) The petitioner and the court shall keep confidential the information in a will or similar instrument, or a copy of the will or similar instrument, under this subsection, and may not, unless otherwise authorized, disclose that information.

*** NOTE: Does this paragraph meet your intent?

End of
NOTE

✓

INSERT 29-13

*** NOTE: I understand that this provision is
sought to codify Matter of Guardianship of F.E.H.,
154 Wis.2d 576 (1990). Therefore, I included "immediate"
as an adjective modifying "family".

✓

assistance in the manner provided in s. 55.06(8) whether or not protective placement is made.

(e) In appointing a guardian under this subsection, the court shall authorize the guardian to exercise only those powers, enumerated in sec. ____, that are necessary to provide for the individual's personal needs and property management in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

- (3) If both a guardian of the person and a guardian of the estate are appointed for an individual, the court may appoint separate persons to be guardian of the person and of the estate, or may appoint one person or persons to act as both.

Subchapter 3, Section 4—Powers of the Guardian of the Person –

NOTE: Most of this would replace the LRB draft at sec. 54.25(2).

individuals determined

(1) Presumption in favor of limited guardianship. A guardian of the person may exercise only those rights and powers that the guardian is specifically authorized to exercise by the court order. Any right or power that the guardian is not authorized to exercise by the court order is retained by the individual, unless the individual has been declared incompetent to exercise the right under sub. (3) or the power has been transferred to the guardian under (4).

(2) Rights retained by all persons found incompetent. An individual found incompetent retains the power to exercise all of the following rights, without consent of the guardian:

1. **(a) To have access to and communicate privately with the courts and government representatives, including but not limited to the right to have input into plans for support services, the right to initiate grievances, including but not limited to state and federal law regarding resident or patient rights, administrative hearings, and court proceedings.**

2. **(b) Other Rights.** To have access to, communicate privately with, and retain legal counsel, with fees paid by the ward's estate, subject to court approval.

3. **(c) Private Communications.** To have access to and communicate privately with representatives of the protection and advocacy agency under sec. 51.62 and the board on aging and long-term care.

7. **(d) Other Rights.** Any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including but not limited to the rights:

4. **1.** To protest a residential placement made under s. 55.05(5), and to be discharged from a residential placement unless the individual is protectively placed under s. 55.06, or the elements of s. 55.06(11) are present.

5. **2.** To petition for court review of guardianship, protective service, protective placement and commitment orders.

6. **3.** To give or withhold a consent reserved to the individual under ch. 51.

4. **4.** To free speech, freedom of association and free exercise of religious expression.

(e) Right to testify

I not B

Subd. 1. or 4.

(c) (3) Declaration of incompetence to exercise certain rights.

(a) Introduction

1. The court may, as part of a proceeding in which an individual is found incompetent and a guardian is appointed, declare that the individual lacks evaluative capacity to exercise one or more of the rights listed in subd. (c) or (d).

2. If an individual has been declared not competent to exercise a right under sub. (c) or (d), a guardian does not have the authority to carry out or provide consent on behalf of the individual.

3. If the court finds with respect to a right listed under sub. (d) 1, 4 or 5 that the person is competent to exercise the right under some but not all circumstances, the court may order that the person retains the right to exercise the right only with consent of the guardian of the person.

2. (b) Any finding that a person lacks evaluative capacity to exercise a right must be based on clear and convincing evidence. In the absence of such a finding the right is retained by the individual.

4. (c) **Right to Vote** Regardless of whether a guardian is appointed, a court may declare that an individual is not competent to exercise the right to vote if it finds by clear and convincing evidence that the individual is incapable of understanding the objective of the elective process. If the petition for a declaration of competence to vote is not part of a petition for guardianship, the same procedures shall apply as would apply for a petition for guardianship.

INSERT F

(d) Other Rights

a. **1. Marriage** That an individual is not competent to consent to marriage.

b. **2. Will** That an individual is not competent to execute a will.

c. **3. Jury Duty** That an individual is not competent to serve on a jury.

d. **4. State Licenses** That an individual is not competent to apply for one or more of the licenses listed in sub. 1. - 11, if it finds that the person is incapable of understanding the nature and risks of the licensed activity, to the extent that engaging in the activity would pose a substantial risk of physical harm to the individual or others. A failure to find that a person is incapable of applying for a license is not a finding that the person qualifies for the license under applicable laws and rules.

- i. License to drive.
- ii. License to hunt.
- iii. Occupational licenses.

e. **5. Sterilization** That an individual is not competent to consent to sterilization, if it finds that the person is incapable of understanding the nature, risk and benefits of sterilization, after the nature, risk and benefits have been presented in a form that the person is most likely to understand.

f. **6. Organ Donation** That an individual is not competent to consent to organ, tissue or bone marrow donations.

INSERT X

(d) (4) Guardian authority to exercise certain powers.

(a) A court may authorize a guardian of the person to exercise all or part of any of the powers listed in sub. 1 through 11 only if it finds, by clear and convincing evidence, that the individual lacks evaluative capacity to exercise the power. The

specified in subd. 2.

court shall authorize the guardian to exercise only those powers that are necessary to provide for the individual's personal needs, safety, and rights in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention. The court may limit the authority of the guardian with respect to any power to allow the individual to retain power to make decisions about which he or she is able to effectively receive and evaluate information and communicate decisions.

and to exercise the powers

voluntary or involuntary

the individual

2. All of the following are powers subject to subd. 1:

a. Except as provided elsewhere, give informed consent to medical examination, procedures and medication, except that consent to psychiatric treatment and medication shall be in accordance with ch. 51.

Except as provided under subd. 2, b., c., d., and e and except for consent to psychiatric treatment and medication under ch. 51, the power to

2. Research

a. Unless it can be shown that by clear and convincing evidence that the ward would never have consented to research participation, a court may assign the guardian the power to authorize the ward's participation in an accredited/certified/other term research project under the following conditions:

if in the ward's best interests,

i. If the research might help the ward; or
ii. If the research might not help the ward but might help others, and it involves no more than minimal risk of harm to the ward.

the research

b. In addition, the guardian may petition the court for permission to authorize the ward's participation in research that might not help the ward but might help others even if the research involves greater than minimal risk of harm to the ward if the guardian can establish by clear and convincing evidence that:

The power

i. the ward would have elected to participate in such research and; and
ii. the proposed research was reviewed and approved by the institution's research and human rights committee, which determined that the research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the regulations for research involving human subjects required by the U.S. Department of Health and Human Services for projects supported by that agency.

of the institution conducting the research

The committee shall have

Federal

Federally supported

3. Experimental Treatment

d. Unless it can be shown that by clear and convincing evidence that the ward would never have consented to any experimental treatment, a court may assign the guardian the power to consent to experimental treatment if the court finds that:

i. the ward's mental or physical status presents a life-threatening condition;

INSERT L

no I

no P

no P

- no A ~~the~~ the proposed experimental treatment may be a life saving remedy;
- no A ~~all~~ all other reasonable traditional alternatives have been exhausted;
- no A ~~two~~ two examining physicians ^{have} recommend the treatment; and,
- no A ~~in the trial court's independent judgment~~ in the ~~trial~~ court's independent judgment, the proposed experimental treatment is in the ward's best interests.

The power to

- (e) 4. Give informed consent to social and supported living services.
- (f) 5. Give informed consent to release of medical, treatment and other confidential records.
- (g) 6. Determine the ^{individual's} person's county or state of residence.
- (h) 7. Make decisions related to mobility and travel.
- (i) 8. Admit the individual to residential facilities as provided under s. 55.05(5).
- (j) 9. Choose providers of medical, social and supported living services.
- (k) 10. Make decisions regarding educational and vocational placement and supports or employment.
- (l) 11. Make decisions regarding initiating a petition for the termination of marriage.
- (m) 12. Any other power the court may specifically identify.

or make an emergency protective placement under s. 55.06(11)

the individual

INSERT Y

(b) In exercising powers and duties delegated to the guardian under this section, the guardian shall, consistent with meeting the person's essential requirements for health and safety and protecting the person from abuse, exploitation and neglect:

- a 1. Place the least possible restriction on personal liberty and exercise of constitutional rights, and promote the greatest possible integration of the individual into his or her community.
- b 2. Make diligent efforts to identify and honor the person's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the person's expressed wishes, the guardian shall take into account the person's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.

do all of the following

individual's

individual's

individual

and statutory

06/09/03

End of INSERT 35-6

[INSERT 35-13A]

***NOTE: I believe that you have
changes for this subsection, based on
changes from the legislative Council ch. 55
Committee, but am not sure what they are.

End of NOTE

✓

INSERT 35-13 B

not # 100, because ch. 55, stats. is proposed to
undergo extensive changes under the Legislative
Council committee, perhaps such a provision,
if not included in the Legislative Council
proposal, should be an amendment to one
of the committee's appropriate bills.

End of
NOTE

(INSERT 36-1)

specifically

**** NOTE: Please let me know what

you want me to do about the definition of

"residence" and change of residence of a ward by

a guardian.

End of NOTE

INSERT 38-4

**** NOTE : I did not add "or agency"
after "person" in s. 54.34(1), as requested ;
the definition of "person" in 990.01(26),
stats., which controls terms used throughout
the statutes, is broad enough to encompass
agencies.

End of NOTE

✓

INSERT 39-9

and, if limited, the specific authority sought
by the petitioner for the guardian or the
specific rights of the individual that
(the petitioner) seeks to have
removed or transferred

INSERT 39-16

**** NOTE: Instead of moving s. 54.34(3)

(renumbered from s. 880.07(4), stats., I repealed it,
, as you noted,
because it's redundant to s. 54.60(5).

End of
NOTE

(INSERT 41-1)

***** NOTE: Who informs the ^{proposed} ward that
his or her statements may be used as a basis for
a finding of incompetency? The petitioner? Other?

End of Note

INSERT 41-8

**** NOTE: Instead of drafting "petition or other moving papers," I consulted Bob Nelson, the civil procedure drafter, who suggested "petition, motion, or other required document." This same comment applies to s. 54.38(2) (a).

End of
NOTE

INSERT 73-20

**** NOTE: I did not change "that" to
"who," as requested, since the term "person"
may encompass units of government, etc.

End of
NOTE

✓

AND HEARING FOR TEMPORARY GUARDIANSHIP

Section #. 880.15 (1s) of the statutes is amended to read: ~~renumbered 54.386 and amended~~

^(B)
(6)
880.15 (1s) NOTICE OF PETITION. The person petitioner give the proposed ward shall ~~cause notice to be given under s. 880.08 of that petition to the minor, spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward.~~ The time limits of s. 880.08 do not apply to notice given under this subsection. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship under s. 880.34 ~~within 30 days of receipt of the notice.~~

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.15; 1977 c. 354, 418, 449; 1979 c. 175; 1981 c. 379; 1995 a. 77.

54.50 (1) (c) 4.

at any time

~~having been~~
~~after requested by~~
~~the ward, his or~~
~~her counsel, the~~
~~guardian ad litem~~
~~or an interested~~
~~party.~~

shall serve notice of the order for hearing on the proposed ward before the hearing or not later than 3 calendar days after the hearing. If the petitioner serves notice after the hearing is conducted and the court has entered an order, the petitioner shall include the court's order with the notice of the order for hearing

**** NOTE: As requested, I retained s. 880.15 (1s), Stats., and replaced the former language of s. 54.50 (1) (c) 2. with it. I added to it the language you had requested for a redraft of s. 54.50 (1) (c) 2., however. Rather than placing this in s. 54.50 (1) (c), I have put it in s. 54.38, the notice section. Please review.

INSERT 45-3

**** NOTE: Should "interested party"
be changed to "interested person"?

End of
NOTE

✓

(INSERT 46-4)

(d) 1. Review any power of attorney for health care under ch. 155, or any durable power of attorney executed by the proposed ward or other any advance planning to avoid guardianships in which the proposed ward had engaged.

2. Interview any agent appointed by the proposed ward under any document specified in subd. 1.

3. Report to the court concerning whether or not the proposed ward's advance planning is adequate to preclude guardianships.

INSERT 46-19

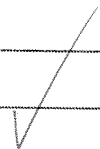
**** NOTE : Does the term "nonTestamentary"
clarify sufficiently for your purposes that the GAL
may not testify in the proceedings?

End of
NOTE

INSERT 49-12

**** NOTE: I did not change "or" to "and" in the third sentence, as requested, because it is important to avoid the implication that the ward, attorney, and GAL must act jointly to present and cross-examine witnesses. I did, however, add "each," to distinguish the actor for that sentence from the actor in the first sentence. In ordinary statutory usage, however, "or," when used to link several actors, allows each actor to perform the action and does not exclude one from the other.

End of
NOTE



INSERT 50-10

**** NOTE: Note that I added
, as well as s. 54.50
s. 54.50 (1) (2), as exceptions to the 90-day
time limit. Note also, that, pending your
decision, s. 54.50 (2) may be moved to ch.
55, stats, as an "admission without court
, at least initially,
involvement," since it does not depend on
a guardianship for its action. However,
please see the following **** NOTE.

End of Note

INSERT 51.13

**** NOTE : I deleted "representatives
of providers of service" from this subsection
because they are not included in the definition
of "interested person" under s. 54.01(12).

End of NOTE ✓

✓

INSERT 52-6

no 9 :

9 1. Contrary to the allegations of the petition, the proposed ward is not any of the following:

9 a. Incompetent.

9 b. A spendthrift.

9 c. A minor.

9 2. Advance planning by the ward renders guardianship unnecessary.

9 3. The elements of the petition are unproven.

INSERT 54-6

**** This provision may require amending
the durable power of attorney chapter, which
will, if necessary, be done in a subsequent
version.

End of NOTE

✓

INSERT 54-19

***** NOTE: In the Legislative Council draft WLC: 0220/PI, "including those fees and costs, if any, related to protective placement of the ward" is stricken. Do you wish to also strike that language in this draft?

***** NOTE: I did not eliminate "Except as provided in par. (b)" from this paragraph, as requested, because the new paragraph (b) ~~was a fee~~ (formerly numbered s. 54.32, renumbered from s. 880.33(2)(a) 3., stats.) (guardian ad litem and defense fees for indigents; liability) seems to be a clear exception to paragraph (a).

End of INSERT

INSERT 55-8

(I)

(c) Fees if guardian is not appointed. If a guardian is not appointed under sub. (2) or (3), the county in which venue lies for the guardianship proceeding is the county liable for any fees due the guardian ad litem. The proposed ward is liable for any fees due his or her legal counsel, except as follows:

1. If counsel is appointed under s. 977.08, the proposed ward is liable only for the fees applicable under s. 977.07 and 977.075.

2. If the court finds the petition for guardianship frivolous under s. 814.025, the court may assess fees to the petitioner.

3. If the proposed ward is indigent and counsel is not appointed under s. 977.08, the county in which venue lies for the guardianship

[INSERT 55-8]

proceeding is liable.

**** NOTE: I included in this paragraph
mention of public defender representation,
because par. (b) mentions it. Is this
drafted as you wish?

End of NOTE

✓

INSERT 56-23

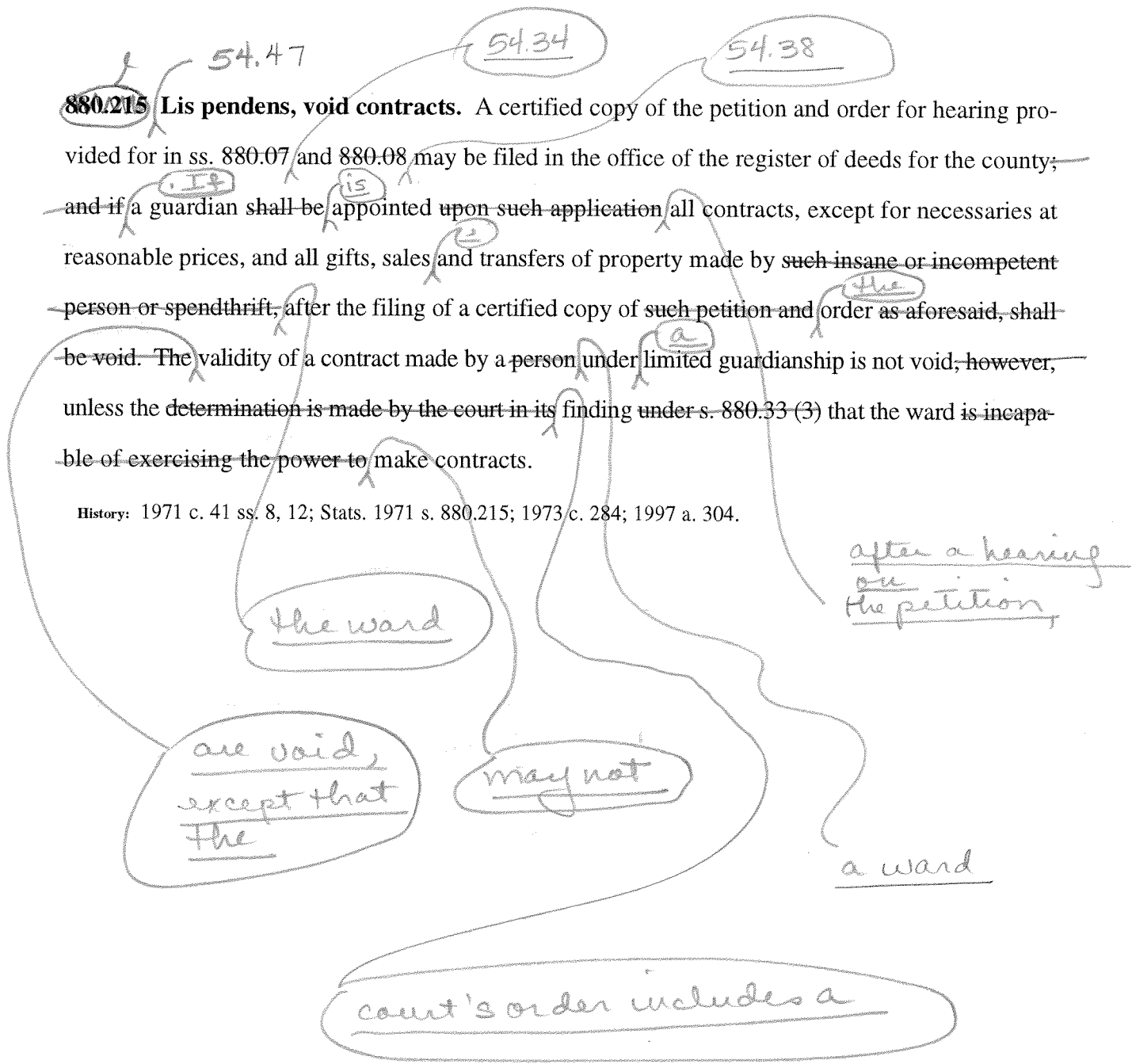
of the estate. If a court determination and order appointing
a guardian of the person is entered, letters
under the seal of the court shall be issued to
the guardian of the person

✓

Section #. 880.215 of the statutes is amended to read:

54.47 **880.215** **Lis pendens, void contracts.** A certified copy of the petition and order for hearing provided for in ss. 880.07 and 880.08 may be filed in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of property made by such insane or incompetent person or spendthrift, after the filing of a certified copy of such petition and order as aforesaid, shall be void. The validity of a contract made by a person under limited guardianship is not void, however, unless the determination is made by the court in its finding under s. 880.33 (3) that the ward is incapable of exercising the power to make contracts.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.215; 1973 c. 284; 1997 a. 304.



***** NOTE : Have I amended this section as you intend?



(INSERT 58-20)

**** Note that the notice provisions
concerning petition and hearing for temporary
guardianship have been moved from this
section to s. 54.38(6).

End of NOTE